

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FIRST DATA MERCHANT SERVICES
CORPORATION,

Plaintiff,

- against -

OXFORD MANAGEMENT SERVICES, INC.,

Defendant.

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MAUSKOPF, United States District Judge:

ORDER
07-CV-2083 (RRM)(ETB)

Plaintiff First Data Merchant Services Corp. (“FDMS” or “Plaintiff”) brought this action against Oxford Management Services, Inc. (“Oxford” or “Defendant”), seeking damages for Defendant’s alleged breach of contract. Plaintiff’s moved for summary judgment, and by Memorandum and Order (Doc. No. 44), granted summary judgment in favor of plaintiff. The Court denied the award of damages without prejudice to renew, following a conference with the Court and the submission of sufficient evidence to support plaintiff’s damage request.

Shortly after the Court’s grant of summary judgment, Oxford’s counsel sought, and was granted permission, to withdraw. (*See* Doc. Nos. 46, 53.) The Court directed Oxford to retain new counsel by July 8, 2011.¹ To date, no counsel has entered a notice of appearance, and as a corporate entity, Oxford may not represent itself. In its Answer (Doc. No. 4), Oxford alleged various counterclaims which remain pending.

Plaintiff now seeks an Order declaring Oxford in default, dismissing its counterclaims for failure to prosecute, and allowing plaintiff to renew its request for damages and the entry of judgment upon submission of additional evidence. (Doc. No. 54.)

¹ Pursuant to the letter seeking to withdraw, Oxford’s counsel indicated that Oxford had ceased operations on March 17, 2011. (Doc No. 46.)

In an abundance of caution, the Court directed Oxford to Show Cause in Writing, by April 9, 2012, whether it intended to pursue its counterclaims or otherwise defend this action. (Doc. No. 55.) Oxford was specifically warned that failure to so do would result in this Court entering default judgment against defendant Oxford in favor of plaintiff FDMS on plaintiff's claims on which this Court has already granted summary judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure, and dismissing all of defendant Oxford's counterclaims pled herein for failure to prosecute pursuant to this Court's authority under Rule 16 of the Federal Rules of Civil Procedure. To date, Oxford has failed to respond. FDMS was also ordered to serve Oxford with a copy of the Court's Order to Show Cause, which it did as evidenced by its letter of April 4, 2012 (Doc. No. 56) and related Affidavit of Service (Doc. No. 57.)

Based on Oxford's conduct, particularly, its failure to secure counsel and its lack of diligence in pursuing its counterclaims, Oxford appears to have abandoned this action and has failed diligently to prosecute its counterclaims.

As such, the Court hereby ORDERS:

That all counterclaims pled by Oxford are hereby DISMISSED; and

That FDMS shall submit by October 1, 2012 sufficient evidence and/or affidavits supporting its measure of damages on its breach of contract claim in order for the Court to enter judgment in favor of FDMS as against Oxford on plaintiff's breach of contract claims pursuant to this Court's Summary Judgment Order.

SO ORDERED.

Dated: Brooklyn, New York
September 24, 2012

Roslynn R. Mauskopf

ROSLYNN R. MAUSKOPF
United States District Judge